



STATE OF ARIZONA
DEPARTMENT OF INSURANCE

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CHARLES R. COHEN
Director of Insurance

Circular Letter 2000-7

TO: Life and Disability Insurers, Agents and Brokers, Health Care Services Organizations, Insurance Trade Associations, and Other Interested Parties

FROM: Charles R. Cohen
Director of Insurance

DATE: May 19, 2000

RE: **Right to Guaranteed Issue Under the Health Insurance Portability and Accountability Act of 1996**

The purpose of this circular letter is to clarify certain requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and implementing state law at A.R.S. § 20-1379 and 20-2301 et seq.

No Age Limitations

The Department has learned that some insurers have denied the right to guaranteed issuance of health insurance policies to HIPAA eligible individuals aged 19 or younger. These denials appear to be based solely on the age of the applicant.

Every health care insurer offering coverage in the individual market is required to guarantee the issuance of coverage to HIPAA eligible individuals in accordance with the provisions of A.R.S. § 20-1379. The definition of eligible individual in A.R.S. § 20-1379(P) has no requirement that a person be of a particular age. Nothing in the law precludes a person age 19 or younger from being an eligible individual if that person meets the statutory criteria and would otherwise be entitled to the guaranteed issuance of coverage.

Insurers may not deny coverage to eligible individuals based on the age of the applicant, including child-only applicants. Any provision in an application, policy, or evidence of coverage that attempts to limit the right to guaranteed issue on the basis of the individual's age is unenforceable as to an eligible individual who otherwise meets the requirements of A.R.S. § 20-1379(P).

Prohibitions on Non-Confinement Clauses

The Health Care Financing Administration (HCFA) has issued a program memorandum (Transmittal no. 00-01, dated March 2000) regarding the application of non-confinement clauses to HIPAA eligible individuals.¹

Health insurance policies often contain what are commonly referred to as “non confinement clauses” or “deferral rules.” Under these provisions, if an individual is an inpatient on the day that coverage is scheduled to take effect, the individual is not entitled to any insurance benefits until the first day after the individual is no longer an inpatient. HCFA’s bulletin provides that such attempts to delay the effective date of coverage violate HIPAA.

According to HCFA’s bulletin, delaying the effectiveness of coverage due to an individual’s hospital confinement violates the Public Health Service Act (PHS) , as added by Title I of HIPAA. For persons in a group, the delay is tantamount to a denial of eligibility based on a health factor, which is prohibited by the non-discrimination provisions of PHS § 2702. In addition, the non-confinement clause operates to exclude pre-existing conditions by precluding coverage of benefits related to a pre-existing condition, in violation of PHS § 2701 (as to persons in a group) and § 2741 (as to eligible individuals).

Arizona has provisions that mirror the prohibitions found in HIPAA. (See A.R.S. § 20-2310(A) and (B) (persons in groups) and A.R.S. § 20-1379 (eligible individuals).) The Insurance Department interprets these provisions in accordance with the HCFA bulletin, and will enforce these provisions against insurers doing business in Arizona. All health insurance issuers selling group or individual health insurance coverage must ensure that the evidence of coverage or policy does not include or attempt to apply a non-confinement clause as to persons in groups or eligible individuals.

Questions regarding this circular should be directed to Mary Butterfield, Assistant Director, Division of Life and Health, 602/912-8443.

¹ A copy of the bulletin is available through HCFA’s web site on HIPAA at www.hcfa.gov/medicaid/hipaa; click on the box for “bulletins.” Alternatively, you may also find the bulletin through HCFA’s home page at www.hcfa.gov After arriving at the home page, type “Insurance Standards Bulletin” in the “search” box. At that site, click on “Bulletin: HI00-01.”